

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1046V

Filed: June 30, 2021

UNPUBLISHED

ROBERT WILLIAMS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;
Pneumococcal Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Traci R. Patton, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On August 3, 2017, Robert Williams, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) following receipt of a pneumococcal vaccine on February 16, 2016. (ECF No. 1)

On July 28, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On June 30, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$33,531.44, which includes \$32,576.51 to petitioner and \$954.93 in satisfaction of a State of California Medicaid lien. (ECF No. 62.) In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, I award Petitioner **\$33,531.44** as follows:

- a lump sum payment of **\$32,576.51** in the form of a check payable to **Petitioner**. This amount represents compensation for all damages that would be available under § 15(a); and
- a lump sum payment of **\$954.93**, representing compensation for satisfaction of the State of California Medicaid lien, payable jointly to petitioner and to:

**Department of Health Care Services
Recovery Branch – MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
DHCS account number: C97261756D-VAC03**

Petitioner agrees to endorse this payment to the California Department of Health Care Services.

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Daniel T. Horner
Daniel T. Horner
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

ROBERT WILLIAMS,
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SECRETARY OF HEALTH AND HUMAN
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)
)
) No. 17-1046V
) Special Master Horner
) ECF
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RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On August 3, 2017, Robert Williams (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to 34 (“Vaccine Act” or “Act”), alleging that he suffered a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of a pneumococcal vaccine on February 16, 2016. Petition at 1. On July 24, 2020, the Secretary of Health and Human Services (“respondent”) filed an Amended Vaccine Rule 4(c) Report advising that, in light of Special Master Horner’s Findings of Fact ruling that the onset of petitioner’s left shoulder pain occurred within 48 hours of vaccination, and the medical evidence submitted in this case, respondent would not continue to defend the case. Amended Rule 4(c) Report at 5 (ECF No. 47). On July 28, 2020, Special Master Horner issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for his shoulder injury related to vaccine administration (“SIRVA”).¹ See Ruling on Entitlement (ECF No. 48).

¹ Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the special master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent

I. Compensation for Vaccine Injury-Related Items

Based on the evidence of record, respondent proffers that petitioner should be awarded **\$32,576.51**. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a), with the exception of the reimbursement of the Medicaid lien, below. Petitioner agrees.

Respondent further proffers that petitioner should be awarded funds to satisfy a State of California Medicaid lien in the amount of **\$954.93**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments that the State of California has made to or on behalf of Robert Williams from the date of his eligibility for benefits through the date of judgment in this case as a result of the vaccine-related injury the special master found Mr. Williams suffered on or about February 16, 2016, under Title XIX of the Social Security Act. Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner be made through two lump sum payments as described below:

- (1) The parties recommend that compensation provided to petitioner should be made through a lump sum payment of **\$32,576.51**, in the form of a check payable to petitioner.² Petitioner agrees.

reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the special master's July 28, 2020, entitlement decision.

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future pain and suffering.

- (2) A lump sum payment of **\$954.93**, representing compensation for satisfaction of the State of California Medicaid lien, payable jointly to petitioner and to:

Department of Health Care Services
Recovery Branch - MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
DHCS account number: C97261756D-VAC03

Petitioner agrees to endorse this payment to the California Department of Health Care Services.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Acting Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
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s/ Traci R. Patton
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Dated: June 30, 2021